

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEOTHESES MILLER

Petitioner,

v.

Case No. 14-10862
Honorable Denise Page Hood

SHERRY BURT,

Respondent.

**ORDER DENYING MOTION FOR RECONSIDERATION [#15], DENYING
MOTION FOR CERTIFICATE OF APPEALABILITY [#16], AND
DENYING MOTION TO PROCEED IN FORMA PAUPERIS [#17]**

This is a habeas case under 28 U.S.C. § 2254. Petitioner filed a pro se petition for writ of habeas corpus. On December 31, 2014, the Court issued an Opinion and Order denying the petition because Petitioner's claims lacked merit. The Opinion also specifically denied Petitioner a certificate of appealability and permission to appeal in forma pauperis.

Before the Court are three motions filed by Petitioner. Petitioner's motions seek reconsideration of the Court's determination that Petitioner is not entitled to a certificate of appealability or permission to proceed on appeal in forma pauperis.

Local Rule 7.1(h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already

ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

There is no palpable defect on the Court's prior order. As the Court already explained, to warrant a grant of a certificate of appealability, “[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473 (2000). Petitioner's habeas claims, both of which challenge the sufficiency of the evidence, do not meet this standard. As the Court explained in its opinion denying the petition, Petitioner's claims amount to nothing more than a challenge to the credibility of the police officer who testified that he found firearms in a duffle bag, and Petitioner acknowledged that it was his bag. The assessment of witness credibility is beyond the scope of federal habeas review. *Gall v. Parker*, 231 F.3d 265, 286 (6th Cir. 2000) (citing *Schlup v. Delo*, 513 U.S. 298, 330 (1995)). Accordingly, not only are Petitioner's claims without merit, the rejection of the

claims are not debatable or wrong. Furthermore, any appeal could not be taken in good faith, so leave to appeal in forma pauperis is denied. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a).

Petitioner's pending motions are therefore DENIED.

I. ORDER

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Reconsideration [**Docket No. 15, filed January 30, 2015**] is **DENIED**.

IT IS ORDERED that Plaintiff's Motion for Certificate of Appealability [**Docket No. 16, filed January 30, 2015**] is **DENIED**.

IT IS ORDERED that Plaintiff's Motion to Proceed in Forma Pauperis [**Docket No. 17, filed January 30, 2015**] is **DENIED**.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: June 30, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 30, 2015, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager